IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/06/2003

Coram

The Hon'ble Mr. Justice E.PADMANABHAN

W.P.No.5978 of 1999 and W.P.No.13966 of 2002
and
W.P.M.P.No.18845 of 2002

Coimbatore District Real Estate
Promoters' Association
rep. by its President .. Petitioner in
both the W.Ps

-Vs-

1.The State of Tamil Nadu
rep. by its Secretary,
Registration Department,
Fort St. George, Chennai 9.

2.The State of Tamil Nadu
rep. by its Secretary,
Revenue Department,
Fort St. George,
Chennai 9.

3.The Chief Controlling Revenue
Authority, Board of Revenue,
Ezhilagam, Chennai 5.

4.The District Collector,
Coimbatore District,
Coimbatore.

5.The Inspector General of
Registration,
Santhome High Road, Chennai.

6.The Deputy Inspector General
of Registration, Coimbatore,
Pankaja Mill Road,
Coimbatore 18.

7.The District Registrar,
Coimbatore Registration District,
Coimbatore.

8.The District Registrar,
Tiruppur Registration District,
Tiruppur. .. Respondents
in both the W.Ps

Petitions filed under Article 226 of The Constitution of India praying to issue a writ of declaration and a writ of mandamus as stated therein.

!For Petitioner .. Mr.R.Gandhi for
Mr.Palani Selvaraj

^For Respondents .. Mr.N.R.Chandran,
Advocate General
assisted by
Mrs.D.Malarvizhi,
Govt. Advocate
:COMMON ORDER

In W.P.No.5978 of 1999, the writ petitioner, Coimbatore District Real Estate Promoters Association has prayed for the issue of writ of Declaration, to declare that the guideline value fixed by the respondents from 01.04.1999 for the purpose of levying stamp duty for registration of deed of conveyance or sale of immovable properties are illegal and unenforceable and consequently forbear the respondents from fixing the guideline value in future for the purpose of levy of stamp duty for registration of documents.

2.The above is the substituted prayer as per the order passed by this court on 13.01.2003 in W.P.M.P.No.1481 of 2003.

3.The very same petitioner association filed W.P.No. 13966 of 2002 praying for the issue of a writ of mandamus forbearing the respondents 2 to 8 from increasing the guideline value arbitrarily and without issuing public notice calling for objections and without framing any guideline as to the basis for such increase of guideline value of the properties situate within the Coimbatore and Tiruppur Registration Districts from 01.04.2002 onwards.

4.At the joint request of the counsel for the petitioner as well as the respondents, both the writ petitions were consolidated and taken up for final disposal.

5.According to the petitioner, the petitioner is a society registered under The Tamil Nadu Societies Registration Act, 1975 and it has been established with the object of protecting and safeguarding its members, who are engaged in real estate business and who desire to fight it out legally the arbitrary and unreasonable action of the respondents. The members of the petitioner association are property developers, which business they have been carrying on for the past several years.

6.The Indian Stamp Act, 1899 is a fiscal enactment charging stamp duty on instruments of various kinds, under which dutiable instruments are

classified under Schedule I. For each class of instrument, rate or rates of stamp duty payable thereof have been prescribed. The stamp duty payable on the date of conveyance is on the ad valorem basis, on the value as set forth in the instrument, as was originally enacted. However, from 1968 onwards, there has been a different basis of charge in this state, on conveyance of immovable properties. According to the present system, stamp duty is payable on the guideline value of the property, which is the subject matter of conveyance. The deeds or documents are being registered under the Indian Registration Act, 1 908. The effect of registration is a notice to all the public.

7.In the Indian Stamp Act or the rules framed thereunder there is no definition of the expression 'guideline value' and/or 'market value'. The explanation to Section 47-A of the Indian Stamp Act provides that for the purpose of the Act, market value of any property shall be estimated to be the price at which the property would have fetched or would fetch, if sold in the open market, on the date of execution of instrument. According to the petitioner, market value itself is a changing factor and the same depends on various elements, circumstances and matters relevant thereof. No exactitude, is in the nature of things possible as there can be either increase or fall in the market value depending upon the demand.

8.According to the members of the petitioner association, the guideline value fixed for the purpose of registration and supplied to the registering officers, the value of properties in a registration district or locality or village or street, has already been arrived at and those guidelines are being insisted to be taken as the market value for levy of stamp duty. The said guideline value does not reflect the market value. The guideline value so fixed are prepared at the instance of the Board of Revenue, is being revised upward from time to time or enhanced by a flat rate of fixed percentage every year as a customary, from the first day of financial year according to the whims and fancies of respondents 2 to 4 and without any criteria as to on what basis, the guideline value is always increasing or enhanced annually. Before preparation of guideline value or revision of guideline value, no publicity is given nor residents in the locality or the trade there is informed of the proposal to revise, nor they are called upon to state their objections if any, and such revision is being carried on secretly. Because of such revision arbitrary and unreasonable enhancement of guideline value, the entire transacting public, particularly, the members of the petitioner association, who are property developers, are put to hardship and they are forced to pay stamp duty in terms of guideline value. If the stamp duty is not paid in accordance with the guideline value, the Registrar either returns the document or keeps it pending, which leads to other complications. It has been the routine and customary practice of the respondents to enhance the guideline value annually, year after year by adopting a particular flat rate increase as if there has been an alround or a gradual increase everywhere in the district or village or locality. The petitioner association sent telegrams and representations but there has been no response. However, the sixth respondent instructed the petitioner to contact the fifth respondent. The fifth respondent had not taken any steps subsequently to look into the matter and without considering the representations made by the petitioner,

increased the guideline value, which is being implemented as a matter of course.

9.The petitioner submitted that they have forwarded a registered letter to the fifth respondent demanding disclosure of details as to how and on what basis and under which provision of law, the guideline value is being fixed or increased annually. But, there was no reply from the fifth respondent. The petitioner has followed the said representation with reminders dated 29.12.1998 and 30.12.1998. Thereafter, on 20.03.1999, an evasive reply was sent by the fifth respondent, advising the petitioner association to find out the market value in Coimbatore District and report.

10.It is contended that there is no basis for preparation of guideline value or for revision of guideline value and the respondents cannot insist that stamp duty has to be paid on instrument of conveyance on the basis of guideline value. The fixation of guideline value for levy of stamp duty is arbitrary, illegal and violative of the statutory provisions and liable to be quashed. There is no provision enabling the respondents to prepare the guideline value either under the Indian Stamp Act or under the Indian Registration Act.

11.It is alleged that the respondents have increased the guideline value from 01.04.1999 onwards by 20%, which is arbitrary, without any basis and there is no rationale behind such increase. According to the petitioner, there has been no demand for lands at all in Coimbatore District consequent to the bomb-blast in Coimbatore and other communal riots that took place during 1998-1999. As a result of such unfortunate incidents, there has been no demand at all for lands or buildings as there were not many takers for the land or building as the case may be after the bomb blast and communal riots which continues and there has been a downward trend in the market price in the District.

12.It is pointed out that there is no provision either in the Indian Stamp Act or the rules made thereunder nor the rules contemplate any procedure or method or criteria to draw the guideline value nor there is any provision to increase the guideline value and extract stamp duty on the basis of guideline value without reference to the bona fide presumption which is entered between willing purchaser and willing buyer. The respondents have neither the jurisdiction nor the authority to fix or enhance or revise or increase the guideline value and the registering authorities asserted their powers by insisting payment of stamp duty based upon guideline value which is furnished to them.

13.It is submitted that as per Article 265 of the Constitution, no tax shall be levied or collected except by the authority of law. The respondents cannot on their own fix or increase or enhance the guideline value of the properties for the purpose of levying stamp duty, which is without authority of law. They have also no authority either to fix or enhance or revise and on that basis to levy stamp duty. The registering authority is the competent

authority for examination as to whether the instrument has been duly stamped and in case a common procedure has been laid down under the Indian Stamp Act and the rules framed thereunder to refer the instrument for adjudication to the Collector, after affording opportunity, assess the market value of the particular property. Without referring to that, the respondent/ registering officers insist for payment of stamp duty solely based upon the Guideline Register. The registering authority being a quasi judicial authority exercising statutory power of levying stamp duty, have conferred their powers on to the respondents who have circulated the guideline value entries of which have been prepared by the committee without reference to the ground conditions or prevailing market value. There cannot always be increase in prices and price depends upon the demand in a particular locality or village or town and it is not fixed. The price of immovable property always do not increase day by day or month by month as is being suggested by respondents.

14.When there is no provision to prepare the guideline value, it is not known under what authority the respondents have compelled the registering authority to follow the guideline value as prepared by them for the purpose of levy of stamp duty. If such a procedure is adopted, it is nothing but abdication of quasi judicial statutory power of levying stamp duty which is per se illegal, discriminatory and arbitrary. The act of the respondents in fixing the guideline value or revising or compelling the registering authority to levy stamp duty based upon the guideline value is arbitrary and violative of Articles 265 and 14 of The Constitution of India.

15.In terms of Section 47-A, the fourth respondent has the authority to determine the market value of any property and if such property is undervalued in the view of the registering authority, the same has to be referred to the Collector and in case if the Collector's decision is not satisfactory, an appeal is provided under the Tamil Nadu (Prevention of Undervaluation) Rules for the determination of market value in respect of property covered by the instrument. In respect of lands, various factors have to be taken into consideration by the registering authority while assessing the market value and levying of stamp duty. The second legal position being the registering authority has to apply his mind independently as a competent statutory authority and act as a quasi judicial authority in arriving at the market value of a particular property in respect of the instrument submitted for registration. The registering authorities without exercising such quasi judicial statutory powers have abdicated their powers to the other respondents, who have fixed the guideline value and if stamp duty is not paid for a particular property as per the guideline value, either refuse to register or compel the payment of stamp duty as found in the guideline register which is illegal and without authority. The flat rate increase in guideline value also is illegal and without jurisdiction. For preparation of such guideline value there is neither a basis nor there is any criteria, which has been fixed in this respect. There cannot always be an upward trend in market value and without reference to the willing buyer who is willing to purchase and the willing seller who is willing to sell for a particular amount, the demand or extraction of stamp duty based upon the guideline value is illegal, besides it is violative of Articles 300-A, 265 and 14 of The Constitution of India. In the light of the said averments, the petitioner has

prayed for issue of a writ of Declaration.

16.The petitioner has also filed a writ petition in W.P.No.13966 of 2002 with identical averments forbearing the respondents 2 to 8 from increasing the guideline value while setting out identical averments in the affidavit filed in support of the wr etition and also certain allegations on revision of guideline value for the subsequent year. This challenge is also identical and it is not necessary to refer to the details of the said averments once over.

17.In W.P.No.5978 of 1999, the Deputy Secretary to Government, Commercial Taxes Department, Chennai 9, who is administratively concerned with the subject, has filed a counter. The said counter has been filed on behalf of all the respondents. It is useful to extract the very stand taken by the respondents while extracting the material portion of the counter, which runs thus:

"3. It is submitted that the introduction of market value has basis, upon which Stamp Duty is payable on certain instrument, which has become essential to provide tool to the Registering Officers to assess prima facie. These correctness of market value is expressed in such instruments.

4. It is submitted that the Registering Officers were unable to know whether the value furnished in the document is correct market value or not. Hence, the necessity for equipping the registering officers to arrive at the valuation of the document was felt. Thus, the guideline registers were supplied to Registering Officers to arrive at the value of the document without inspecting the property.

5. It is submitted that the duty of a Registering Officer is to conduct an enquiry under rule 3(3) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 to find out the true market value mentioned in the document. Since the Registering Officer cannot go out of his office to verify the correctness of the market value stated in the document, the Department thought that it was quite necessary to provide him with some modalities or guideline to find out prima facie whether the document has been correctly valued. For this purpose, the erstwhile Board of Revenue was asked to evolve a procedure to be followed by the Registering Officers. The Board of Revenue with the help of Revenue and Registration Department Staff found out the value for each survey number in the village. Those registers were called "Guideline Registers" and supplied to the registering authorities in 1970. Such Registers were first prepared in the year 1968. But subsequently the Guideline values were revised in the year 1971, 198 1 and 1986. As the land value of the properties are increasing sharply year after year, it was felt that updating the value in the Guideline Register is essential to prevent loss of revenue to Government. The Government have, therefore, ordered for annual revision of the guideline value. The Government have also constituted a "Value Fixation Committee" under one Additional Inspector General of Registration (Guidelines) as Chairman, Deputy Inspector General of Registration of the concerned Zone, District Registrar of the concerned District, as Members and one District Registrar (Guidelines) as Secretary to

the Committee, to supervise and guide the annual revision of guideline value.

6. It is submitted that the Committee has been empowered to revise the guideline value on the basis of the growth rate, conditions of the place and on enquiries wherever and whenever necessary. The annual revision is being done on the basis of growth rate, sales statistics, use of land, environmental and geographical conditions, breadth of roads and value ascertained by enquiry. The Committee is also committed to rectify anomalies if any in the existing value by fixing new guideline value. The Committee is taking steps with the regular field staff of the department to inspect the layouts and plots and find out the correct value by enquiry and by reference to registration statistics. The petitioner filed a writ petition against the guideline revision made by Registration Department as stated above.

7. It is submitted that the Guideline Committee will revise the guideline by working out the value on the basis of growth rate, sales statistics and local enquiry. Fancy price, motivated price and price arising out of disputes are ignored and eliminated while arriving at the growth rate. Market value determined by Special Deputy Collectors under Section 47-A(1) of the Indian Stamp Act, 1899 (Central Act 2 of 1 899) (hereinafter referred to as the Act) is taken into consideration while fixing the guideline value.

8.It is submitted that in Tiruppur Municipal area, the growth rate for the year 1999-2000 varies from 11.36 to 16.65%. In Pollachi SubRegistry Office comprising wards 1 to 8, the growth rate is between 10.37% and 14.01% and in Udumalpet Municipal Area comprising wards A to E, the growth rate is between 11.75% and 15.16%.

9.It is submitted that in Coimbatore Corporation area, the growth rate for the year 1998-99 for the wards comprised from 1 to 11 and Ganapathy varies from 6.65 to 14.67%. In Municipal area it varies from 10 .39 to 11.97%.

10.It is submitted that the Value Fixation Committee camped at Coimbatore during November, 1998 has approved the growth rate for Coimbatore and Tiruppur on the basis of sales statistics and local enquiry and based on this the guideline value was revised.

11.It is submitted that the guidelines are thus revised once in 3 years for Rural areas and annually for Corporation, Municipalities, Township and local planning areas. This year guideline value has been revised with effect from 1.4.99 in Coimbatore and Tiruppur also.

12.Regarding paragraphs 2 and 3 of the affidavit, it is submitted that the following are the guiding factors for determining the market value:

Principles for determination of market value:
(a) In the case of lands:
(i) classification of the lands as dry, manavari or wet and the like;

(ii) classification under various terms in the settlement register and accounts;
(iii) the rate of revenue assessment for each classification;
(iv) other factors which influence the valuation of the land in question;
(v) points, if any, mentioned by the parties to the instrument or any other person which require special consideration;
(vi) value of adjacent lands or lands in the vicinity;
(vii) average yield from the land, nearness to road and market distance from village site, level of land, transport facilities, water available for irrigation such as tanks, wells and pumpsets.
(viii) the nature of crops raised on the land.

(b)In the case of house site:

(i) the general value of house sites in the locality;
(ii) nearness to road, railway station, bus route;
(iii) nearness to market, shops and the like;
(iv) amenities available in the place like public offices, hospitals and educational institutions;
(v) development activities, industrial improvement in the vicinity;
(vi) land tax and valuation of sites with reference to taxation record of the local authorities concerned.
(vii) any other features having a special bearing on the valuation of the sites, and
(vii) any special feature of the case represented by the parties.

(c) In the case of building:

(i) type and structure;
(ii) locality in which constructed;
(iii) plinth area;
(iv) year of construction;
(v) kind of materials used;
(vi) rate of depreciation;
(vii) fluctuation in rates;
(viii) any other features that have a bearing on the value;
(ix) property tax with reference to taxation records of local authorities concerned;
(x) the purpose for which the building is being used and the income if any, by way of rent per annum secured on the building; and
(xi) any special feature of the case represented by the parties.

(d) Properties other than lands, house sites and building:

(i) the nature and condition of the property;
(ii) the purpose for which the property is being put to use; and

(iii) any other special features having on the valuation of the property.

13. It is submitted that by taking into account the above factors, the Tamil Nadu Registration Department is adopting the land and building method to arrive at the value of the property, though there are other methods available such as development method, capitalization method and profit method.

14. It is submitted that the Guideline provided by the State would serve as prima facie material available before the registering authority to assist him regarding the value. It is common knowledge that the value of property varies from place to place even to locality. The guidelines were not intended as a substitute for market value or to foreclose the enquiry by Collector under Section 47-A (1) of the Act."

18.In terms of Section 47 A (1), when the registering authority has reason to believe that the instrument of conveyance has not been truly set forth, the instrument is referred to Special Deputy Collector for adjudication. The said collector under Section 47 A of the Act, according to the respondents, cannot shirk his responsibility of adopting the guideline value nor can he fix the market value without proper authority and evidence to support it.

19.It is contended that the guideline value is not the final value and it is not a substitution for market value. It has been pointed out that the guideline value is only a tool to find out prima facie whether the market value set forth in document is correct. It is contended that guideline value is revised only on the basis of the registration done, growth rate, higher values already recorded, geographical conditions, use of the land and value ascertained by the oral enquiry etc. It is contended that the guideline value is not revised or enhanced arbitrarily and as customary. The guideline value is merely a tool to find out prima facie whether the market value set forth is correct. The entries made in the Guideline Register cannot be a substitute for market value and it is the duty of the registering officer to collect stamp duty on the market value of the property, which is the subject matter of conveyance. But he cannot go out of office to verify the correctness of the value stated in the instrument. If the value of the property is not revised, it will not definitely reflect the real and true value of the property. If the registering officer feels and suspects the value stated in the document is not truly set forth, it is his utmost duty to prevent the leakage of the legitimate revenue to the State and he cannot compel the registrants to accept the value noted in the Guideline Register supplied to him for his reference, but he can refer the document to the Collector under Section 47-A of the Act.

20.It is submitted that the same method is being followed in the preparation of guideline value and revision there of. The Guideline Register is a mere register for reference to the registering officer and as such the contentions of the petitioner are devoid of merits. The Guideline Register supplied to the registering officials is intended merely to assist them to ascertain prima facie whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of the properties

cannot be a substitute for market value. Such entries will not foreclose the enquiry of the Collector under Section 47-A of the Act or fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the documents. Since the registering authority cannot go out and make an enquiry, it is necessary to provide him with some modalities or guidelines and the Guideline Register is the outcome.

21.It is incorrect to contend that the guideline value is revised or enhanced by a flat rate. Guideline register is the register merely to assist the registrar to know the market value of the property and no request of the petitioner or other persons interested being afforded an opportunity before preparation of Guideline Register or revision of the rates from time to time can be complied with.

22.It is pointed out that there is a tendency among the public to evade payment of stamp duty, they deliberately undervalue the property conveyed. This necessitated the preparation of Guideline Register and supplying the same to the registering officer to find out prima facie whether the document has been correctly valued. It is not compulsory for the registrar to accept the guideline value and if the registering officer finds that there is a prima facie undervaluation of the property with reference to guideline value and had reason to believe that the value is not truly set forth, he may refer the same for determination of market value. If the value of the property could not be found out by the registrar and the public in general also fail to set forth the real value of the property conveyed, it is the duty of the registering officer to find out the real and true market value of the property.

23.Whether the document is truly valued in terms of the provisions of the Stamp Act or not, it is a laborious work if each and every document should have been referred to the Collector under Section 47-A of the Act and public in general will feel unhappy with the service of the respondents. In order to render quick service to the public, it was felt that the Guideline Register is necessary to the registering officer.

24.The Guideline Register was initially prepared by the then Board of Revenue with the help of Revenue and Registration Department staff and market value of each survey number was found out. Thereafter, every year, the rates were revised based on the registration done as detailed in the counter. There are many instances where the rate in the Guideline Register are not correctly reflecting the real market value for which the Guideline committee rectifies that anamoly. As there are separate values existing for lands, house sites, street etc., there is no necessity to prepare the guidelines for each and every year on the classification of the lands. The rates are revised on the basis of the registration done and it cannot be objected to. If the registering authority feels and suspects the value in the instrument is not truly set forth, then, it is his utmost duty to prevent the leakage of the legitimate revenue to the State, he cannot compel the registrants to accept the value noted in the Guideline Register supplied to him for his reference but he can refer the document to the Collector under Section 47-A. It is

admitted that the guideline value is revised and increased on the basis of registration done, growth rate, higher values already recorded, geographical conditions, use of the land and value ascertained by the oral enquiry etc., If the guideline value does not reflect the market value or real value, the committee rectifies the anamoly. In the circumstances, the respondents prayed for dismissal of W.P.No.5978 of 1999.

25.In W.P.No.13966 of 2002, no separate counter has been filed and the counter filed in W.P.No.5978 of 1999 has been adopted.

26.Heard Mr.R.Gandhi, learned Senior Counsel for Mr.Palani Selvaraj, for the petitioner in both the writ petitions and the learned Advocate General for respondents in both the writ petitions.

27.The counsel for the petitioner has placed a copy of the letter written by the Secretary to Government, Commercial Taxes Department dated 24.12.1999 and pointed out that the Government has admitted that for the year 1999-2000, the guideline value increased is more than the market value, that the guideline value for 1995-1996 has been increased by 13.97%, 14.57% during the year 1996-1997, 12.28% during the year 1997-1998, 10.62% during the year 1998-1999 and as the market value was far below the guideline value, the Government directed the Inspector General of Registration to postpone the revision of guideline value for the year 1999-2000.

28.The learned Senior counsel appearing for the petitioner also took the Court through the typed set of papers filed by petitioner in support of his contentions in both the writ petitions. In both the writ petitions, the following points arise for consideration :

(i)What is the authority or efficacy of the Guideline Register on the registering authority?

(ii)Whether the registering authority who has to satisfy himself, is bound by the entries in the Guideline Register circulated to the registering authority?

(iii)Whether the Guideline Register is a mere indication of the market value in the locality? or whether the registering authority can enforce Guideline Value and levy stamp duty on that basis?

(iv)Whether the Guideline in the Register is binding on the registering authority or the Special Deputy Collector who has to fix the market value on a reference under Section 47 A?

(v)Whether the entries in the guideline Register has to be taken or deemed to be the market value?

(vi)Whether the guideline value as was amended from time to time by upward revision at flat rates is enforceable? Whether the mandamus has to be issued as prayed for forbearing the respondents from acting in terms of the guideline value and levying stamp duty on that basis?

29.For consideration of the above points, it is essential to refer to the provisions of the Indian Stamp Act as well as Indian Registration Act and the rules framed thereunder. All the points could very well be considered together.

30.The Indian Stamp Act, 1899 is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. There cannot be any doubt that these stringent provisions of the Indian Stamp Act are conceived in the interest of the revenue. The Indian Stamp Act, 1899 (has been engrafted in the statute book) is an act to consolidate and amend the law relating to stamps. The applicability of the Act stands restricted and has to be confined in accordance with the scheme of the Act. The Act being truly a fiscal statute in nature, as such strict construction is required to be effected and not liberal interpretation.

31.Section 2 is the definition section, Section 3 is the charging section which provides that subject to the provisions of the Act and the exemptions contained in Schedule I, the instruments shall be chargeable with duty of the amount indicated in that schedule as the proper duty therefor. Chapter III of the Act provides for adjudication as to stamps. Chapter IV relates to instruments not duly stamped. Section 47-A provides as to how instruments of conveyance, exchange, gift, release of benami right or settlement are to be dealt with by the registering officer while registering, when he has reason to believe that the market value of the property has not been truly set forth in the instrument.

32.Section 47-A prescribes that if the registering authority has reason to believe that the market value of the property has not been truly set forth, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. Sub Section (2) of Section 47-A confers powers on the Collector to

determine the market value of the property which is the subject matter of conveyance, exchange etc., and the difference in stamp duty, if any in the amount of duty shall be paid by the person as may be fixed by the Collector.

33.Section 47-A (3) confers suo motu powers to reopen, on the Collector. Sub Section (4) of Section 47-A confers liability on the person to pay the difference in the amount of duty under sub section (2) or sub section (3) and has to pay the difference and in default of such payment, the same shall be a charge on the property affected in such instrument. Sub section (5) provides for the appeal to such authority as may be prescribed in this behalf. Sub section (6) provides powers on the Chief Controlling Revenue Authority to call for and examine the order passed under sub section (2) or sub section (3). The procedure prescribed in sub sections (3) to (10) of Section 47-A has been introduced from time to time by various amending enactments of the State Legislature.

34.Schedule I entry 23 prescribes the stamp duty payable in respective instruments of conveyance. Proper stamp duty payable under entry 2 3 in respect of conveyance on the basis of the market value of the property, is the

subject matter of conveyance. Hence difference in rates chargeable in respect of properties situated in the cities of Chennai, Madurai, Coimbatore, Salem and Trichy vis-a-vis any other property within the State. The expression □market value□ has not been defined in the Indian Stamp Act or in the rules framed thereunder. While considering the validity of Section 47-A as introduced by the State legislature, a Division Bench of this Court in State Vs. T.N. Chandrasekharan (AIR 1974 Madras 117), held thus:

"2. We agree with him that stamp duty is a duty on an instrument as defined in the Stamp Act, and that this concept as to the character of the duty is in accordance with the British and Indian Legislative practice, and the scope of Entry 44 in List III of the Seventh Schedule to the Constitution, to wit "stamp duty other than the duties or fees collected by means of judicial stamps, but not including rates of stamp duty." But we cannot agree with him that the substitution made by the Amending Act has altered the character of the duty. While stamp duty is a charge on the instrument which by itself is the taxable event, the measure of charge may be fixed or ad valorem. Chargeable event which is an instrument, as defined in the Act and described in the first column of the First Schedule to the Act, is not to be confused or mixed up, or identified with the measure of duty, which is indicated in the second column of that Schedule. Sec.3 of the principal Act, which is the charging section makes this clear, that is, what attracts liability to duty is the instrument of the particular description, the charge is on the instrument, not on the consideration or amount indicated in the document which is but a measure of, or the basis for computation of the extent of liability to stamp duty. The section says that every instrument mentioned in the schedule, subject to exemptions or exceptions, shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefor. Liability to duty is on the instrument, and its quantum depends on its description as well as the measure indicated in the First Schedule to the Act.

3. Again, with respect, we are also unable to agree that market value is such an uncertain and indefinite matter so as to make the Court hold that the amendment is arbitrary or unreasonable involving violation of Arts. 14 and 19(1)(f) of the Constitution. The expression ' market value' as a basis for direct tax or for quantification of tax is to be found in several of the taxing statutes, as for instance, the Wealth Tax Act, the Gift Tax Act, the Estate Duty Act and so on. Though market value may be a varying factor and arithmetical accuracy may not be possible, still it cannot be said that the expression is so uncertain or vague or indefinite as to make it arbitrary or unreasonable for purposes of the said two Articles. Market value has been made the subject of taxation or the means by which tax could be quantified as such in many Acts, and its validity had been upheld by this Court as well as the Supreme Court. We are of the view, therefore, that the Madras amendment is not violative of Article 14 or Art. 19(1) (f) of the Constitution."

The object of amending act is to avoid evasion of stamp duty.

The Division Bench further held thus:
"5. .....Even so, we are inclined to think that the object of the Amending Act being to avoid large scale evasion of Stamp duty, it is not meant

to be applied in a matter-of-fact fashion and in a haphazard way. Market value itself, as we already mentioned, is a changing factor and will depend on various circumstances and matters relevant to the consideration. No exactitude is, in the nature of the things possible. In working the Act, great caution should be taken in order that it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion. Even in such a case, we trust that disputes will not be raised for petty sums. Unless the difference is considerable or sizable and it appears patent that the amount mentioned in the document is a gross undervalue, no disputation as to value is expected to be started."

35. After the introduction of Section 47-A, the State framed rules called the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. Rule 5 prescribes as to how the Collector shall fix the market value and as to what are the criteria which have to be taken into consideration while arriving at the market value.

36. The main challenge is that the guideline value is adopted by the registering authority as binding and final while registering the document falling under Section 47-A. Such a guideline, according to the learned counsel, the State or the authority constituted under the Indian Stamp Act or Indian Registration Act have no authority to enforce and such guideline would result in abdication of the registering authority of his powers and submitting to the dictation of the higher authority, who has approved the guideline value.

37.The attention of this Court is drawn to the judgment of Balasubrahmanyan, J., in Collector, Nilgiris Vs. M/s.Mahavir Plantations Pte. Ltd. (AIR 1982 Madras 138). V Balasubrahmanyan, J.,as he then was, held that the object of Section 47-A is only to neutralise the effect of undervaluation of the property. With reference to the valuation, guidelines prepared by the revenue officials, the learned Judge held that the guidelines were intended merely to assist the sub registrars to find out prima facie whether the market value set out in the instrument had been set forth correctly and were not intended as a substitute for market value or to foreclose the enquiry by the Collector under Section 47-A of the Act on reference. The learned Judge in this respect held thus:
"10. .....The valuation guidelines prepared by the Revenue Officials at the instance of the Board of Revenue were not prepared on the basis of any open hearing of the parties concerned or of any documents with a view to eliciting the market value of the properties concerned. They were based on data gathered broadly with referene to classification of lands, grouping of lands and the like. This being so, the Collector acting under S. 47-A cannot regard the guidelines valuation as the last word on the subject of market value. To do so would be to surrender his statutory obligation to determine market value on the basis of evidence, which is a judicial or a quasi-judicial function which he has to perform. To adopt figures prepared at the instance of the Board of Revenue in the valuation guidelines which are

merely a compilation of data by subordinate officials of an administrative authority on the basis of administrative action would be dangerous, because they offer no guarantee of truth or correctness of the data, not being susceptible to check or verification by a judicial or quasijudicial process of evaluation of evidence. A similar view has been expressed by V.Ramaswami, J. in Hema v. State of Tamil Nadu (W.P.2526 of 1977), in a judgment dated 15.11.1979, as yet unreported in the law reports. The learned Judge observed thus-

"The guidelines may constitute sufficient material for the registering authority to entertain a plea that the true market value had not been set forth in the document. But it cannot be a substantive evidence against the petitioner". Earlier in the judgment, the learned Judge had given the background to the preparation of valuation guidelines register in 1968. In that connection, the learned Judge observed-

"Thus, it will be seen that the valuation guidelines have not been prepared after notice to the owners of the land concerned. It has been prepared with reference to the classification of the land as wet, dry of manavari, tharam and sort and these were again further grouped with reference to their situation (sic). In the nature of things, therefore, these guidelines have an evidenciary value. They are only intended to give an information or instruction to the registering authorities so as to enable them to come to a reasonable belief within the meaning of S.47-A (1), that the market value of the property which is the subject-matter of conveyance has or has not been truly set forth in the document. After a reference is made, the Collector has to determine the market value with reference to the Explanation in S.47-A."

38. The learned Judge further held that the Collector on a reference has to determine the open market value and in this regard, has observed as follows:

"13..... Open market is, in my judgment, an objective standard which lays down that the market value to be adopted by the Collector and the market value which the parties are required to adopt in their instruments must be a fair market value in the sense that there are no economic shackles or inhibitions of any kind which prevent the price level from finding its level. Thus, the conception of open market rules out, at one end, fancy prices and, at the other end, distress sales. Economic equilibrium is the hall-mark of open market."

39. Much reliance is placed upon the judgment of the Balasubrahmanyan, J., as well as the Division Bench judgment of this Court in Park View Enterprises Vs. State of Tamil Nadu (AIR 1990 Madras 251). The Division Bench laid down that except the Collector, no authority of the Registration Department in any other capacity could fix the market value and decide upon the proper stamp duty payable in respect of any instrument covered by Section 47-A. The Division Bench declared the circular dated 09.12.1988 as illegal and void and also held that the registering authority cannot compel the registration of the instrument of all the kinds covered by Section 47-A. The pronouncement of the Division Bench in Park View Enterprises Vs. State of

Tamil Nadu (cited supra) was challenged before the Supreme Court by the State. The Supreme Court in Government of Tamil Nadu Vs. Park View Enterprises (20 01 1 SCC 742) held that Section 47-A plainly means the method to be adopted or to be taken recourse to in the event of instrument of conveyance stands undervalued. The only option for the registering authority is to register the document and thereafter refer to the Collector. With reference to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instrument) rules, 1968, the Supreme Court held thus:

"9.Incidentally, the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 were framed on 22.4.1968 in terms of the provision of Section 47-A read with Section 75 of the Indian Stamp Act. The Rules prescribe as to the circumstances under which the authority ought to calculate the market value of the property as required under Section 27 of the Act and the functions of the registering authority on that count. Specific reference has, however, been made to Rule 3.3 which reads as under:
"3.3 The registering officer may, for the purpose of finding out whether the market value has been correctly furnished in the instrument, make such inquiries as he may deem fit. He may elicit from the parties concerned any information bearing on the subject and call for and examine any records kept with any public officer or authority."

40. The Supreme Court further held that only after registration, the registrar can take certain steps and such question will not arise before the registration.

41. In AIR 1990 Madras 251 (cited supra), it was held that the registrar after registering a document has to refer the instrument to the Collector to follow the procedure under Section 47-A read with the Rules.

42. In AIR 1982 Madras 138 (cited supra), the learned Judge held that the guidelines are merely a compilation of data by the subordinate officials in an administrative capacity and it would be dangerous to accept the same as correct or final while evaluating the market value. After registering the document, the registrar has to refer the document to the Collector. The valuation guideline was not prepared on the basis of any open value of the properties concerned nor any procedure has been confined nor is a statutory proceeding which confers certain amount of legality as to such valuation guidelines.

43. An identical situation arose before the Supreme Court in State of Punjab Vs. Mohabir Singh (1996 1 SCC 609) and identical contentions advanced were the subject matter of consideration before the Supreme Court. The Supreme Court in this context held thus:

"5.The guidelines provided by the State would only serve as prima facie material before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be predetermined. It would depend on prevailing prices in the locality in which the land covered by the instrument

is situated. It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Section 47-A."

44. The Supreme Court further in the same pronouncement held that the guidelines would inhibit the registering authority from exercising his quasi judicial satisfaction to the true value of the property or consideration reflected in the instrument presented before for registration. In this context, the Supreme Court held thus:

"6. It would thus be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself, before registering the document, whether the true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under sub-section (1) of Section 47-A, he registers the document. Thereafter, he should make a reference to the Collector for action under sub-sections (2) and (3) of Section 47-A. Accordingly, we hold that the offending instructions are not consistent with sub-section (1) of Section 47-A. It would, therefore, be open to the State Government to revise its guidelines and issue proper directions consistent with the law."

45.In Ramesh Chand Bansal Vs. District Magistrate/Collector (1999 5 SCC 62), the Supreme Court considered the circular supplying biennial statement under Rule 240A of the Uttar Pradesh Stamp Rules, 1942 and held that the circle rate fixed by the Collector is not final but is only a prima facie determination of the rate of the area concerned only to give guidance to registering authority to test prima facie whether the instrument has properly described the value of the property or not and it merely enables the registering authority to exercise his powers conferred under Section 47-A. In this respect, the Supreme Court held thus:

"5.The object of the Indian Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such duty is payable. This is to protect the State revenue. It is a matter of common knowledge that in order to escape such duty by unfair practice, many a time undervaluation of a property or lower consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds is on the actual market value of such property and not the value described in the instrument. Thus, on obligation is cast on the authority to properly ascertain its true value for which he is not bound by the apparent tenor of the instrument. He has to truly decide the real nature of the transaction and value of such property. For this, the Act empowers an

authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village, from location to location and even may differ from the sizes of area and other relevant factors. This apart there has to be some material before such authority as to what is the likely value of such property in that area. In its absence it would be very difficult for such registering authority to assess the valuation of such instrument. It is to give such support to the registering authority that Rule 340A is introduced. Under this, the Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would at best be the prima facie rate of that area to assess the true valuation of a transaction in an instrument. This gives him material to test prima facie whether the description of valuation in an instrument is proper or not.

Reading Section 47-A with the aforesaid Rule 340A it is clear that the circle rate fixed by the Collector is not final but is only a prima facie determination of rate of the area concerned only to give guidance to the registering authority to test prima facie whether the instrument has properly described the value of the property. The circle rate under this rule is neither final for the authority nor to one subjected to pay the stamp duty. So far sub-sections (1) and (2) are concerned they are very limited in their application as they only direct the registering authority to refer to the Collector for determination in case the property is undervalued in such instrument. The circle rate does not take away the right of such pe property in question is correctly valued as he gets an opportunity in case of undervaluation to prove it before the Collector after reference is made. This also marks the dividing line for the exercise of power between the registering authority and the Collector. In case the valuation in the instrument is same as recorded in the circle rate or is truly described it could be registered by the registering authority but in case it is undervalued in terms of sub-section section (2), it has to be referred to and decided by the Collector. Thus, the circle rate, as aforesaid, is merely a guidelin indicative of a division of exercise of power between the registering authority and the Collector."

46. In the light of the pronouncement of the Supreme Court in Ramesh Chand Bansal Vs. District Magistrate/Collector (1999 5 SCC 62) as well as the earlier pronouncement in State of Punjab Vs. Mohabir Singh (1996 1 SCC 609) the guideline value either preparatio circulation or alteration or enhancement is an indicative price which the registering authority may take into consideration to come to the prima facie view whether the instrument has been undervalued and if such view is arrived at, he has to refer the same to the Collec determination. The Registering Officer has to register the instrument and refer the document to the Collector for determination of the market value and the stamp duty payable thereof. Therefore, the guideline value, either preparation or drafting or revision or circular issued, is of no consequence in so far as the person who is liable to pay the stamp duty, as whenever the registering authority comes to the conclusion that the instrument stands undervalued, he has to complete the

registration and forward the same to the Collector for adjudication. The Collector has to follow the procedure, afford opportunity and thereafter determine the market value as well as the stamp duty payable on the instrument. The guideline value is also not bi Collector as he has to fix the market value of the property which is the subject matter of conveyance or settlement or any other instrument falling under Section 47-A independently and fix the market value as held by the Division Bench as well as Supreme Court approved.

47. The question of affording opportunity or public hearing before finalising the guideline value or arriving at the guideline value will not arise as the same is neither final nor it is binding on the person who is liable to pay the stamp duty and it may, at the worst, be an index of the rate which may enable the registering authority to refer the document for valuation, if he comes to the conclusion that the document is undervalued. Purely based upon the guideline value, the Registrar cannot compel any one to pay the difference as it is not that purpose for which the guideline value is prepared.

48. In Jawajee Nagnatham Vs. Revenue Divisional Officer (1994 4 SCC 595), though the said pronouncement arose under Section 23 of the Land Acquisition Act, the Supreme Court considered the scope of Section 47-A as well as effect of guideline value and held that the basic value of registration has no statutory base. The Supreme Court in the said pronouncement held thus:

"4.....The Indian Stamp Act, 1899 provides the power to prescribe stamp duty on instruments, etc. Entry 44 of List III, Concurrent List, of the VIIth Schedule read with Art Stamp Act, 1899. In exercise thereof all the State Legislatures including the Legislature of A.P. amended the Act and enacted empowering the registering officer to levy stamp duty on instruments of conveyance, etc., if the registering officer has reason to believe that the market value of the property, covered by the conveyance, exchange, gift, release of right or settlement, has not been truly set forth in the instrument, he may refuse registering such instrument and refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. On receipt of such opinion, he may call upon the vendor as per the rules prescribed, to pay the additional duty thereon. If the vendor is d he has been given the right to file an appeal and further getting reference made to the High Court for decision in that behalf. Section 47-A would thus clearly show that the exercise of the power thereunder is with reference to a particular land covered by the instrument brought for registration. When he has reasons to believe it to be undervalued, he should get verified whether the market value was truly reflected in the instrument for the purpose of stamp duty; the Collector on reference could determine the same on the basis o market value. Section 47-A conferred no express power to the Government to determine the market

value of the lands prevailing
particular area, village, block, district or the region and to maintain Basic
Valuation Register for levy of stamp duty for registration of an
instrument, etc. No other statutory provision or rule having statutory
force has been brought to our notice in support thereof. Whether an
instrument is liable for higher stamp duty on the basis of valuation
maintained in the Basic Valuation Register, came up for consideration in Sagar Cements Ltd. V. State of A.P. B.P.Jeevan Reddy
unilaterally fixed the valuation of the lands, the Basic Valuation Register has no statutory foundation and therefore it does
parties. Neither the Registrar nor the vendor is bound by it. The market
value of the land for proper stamp duty has to be determined as per
the law under Section 47-A itself. That view was followed by another
learned single Judge in P.Sasidar v. Sub-Registrar. It is therefore,
clear that the Basic Valuation Register prepared and maintained for the purpose of collecting stamp duty has no statutory bas
cannot form a foundation to determine the market value mentioned
thereunder in instrument brought for registration."

49. The contention advanced by Petitioners cannot be sustained and
it runs counter to Section 47-A as well as the Tamil Nadu Stamp (
Prevention of Undervaluation) Rules and the pronouncement of the Supreme
Court referred to above. Further Rule 3(4) of the Tamil Nadu Stamp (
Prevention of Undervaluation of Instruments) Rules 1968 merely
indicate that the Registering Officer may look into the Guidelines Register
for the purpose of verifying the market value. That apart the
Explanation to Rule 3(4) makes it clear that the Guidelines Register "is
intended merely to assist the Registrar to ascertain prima facie".
The Explanation reads thus:

"Explanation.-The "Guidelines Register" supplied to the officers is
intended merely to assist them to ascertain prima facie, whether the
market value has been truly set forth in the instruments. The
entries made therein regarding the value of properties cannot be a
substitute for market price. Such entries will not foreclose the enquiry of
the Collector under section 47-A of the Act or fetter the discretion
of the authorities concerned to satisfy themselves on the
reasonableness or otherwise of the value expressed in the documents."

50.In the circumstances, this Court holds thus:
On Points(i),(ii)and(iv):The guideline value Register entries are
neither final nor conclusive nor it is binding on the Registering
authority as well on the Collector to whom the instrument is referred for valuation under Section 47(A) and the Collector has
procedure prescribed while assessing the value of the subject matter
covered by the instrument and levy stamp stamp duty independently and
without in any manner being influenced by the "guide lines Register".

On Point (iii) this Court holds that the guidelines Register merely
an indication for the Register to proceed further while registering
instruments falling under Section 47 A of the Indian Stamp Act.

On Points (v) and (vi): This Courts holds that the entries in the guidelines Register is not enforceable nor the Registering authority could insist to pay difference in stamp duty payable based upon guidelines Register, but has to refer the instrument to the Collector under Section 47 A read with the rules.

51. In the result, all the points are answered against the writ petitioners and the writ petitions are dismissed holding that the petitioners are not entitled to the reliefs prayed for in both writ petitions. Consequently, connected W.P.M.P is dismissed. The parties shall bear their respective costs in both the writ petitions.

Index: Yes
Website:Yes

mmi/sal

To

1.The Secretary to Government,
Registration Department,
Fort St. George, Chennai 9.

2.The Secretary to Government,
Revenue Department,
Fort St. George, Chennai 9.

3.The Chief Controlling Revenue
Authority, Board of Revenue,
Ezhilagam, Chennai 5.

4.The District Collector,
Coimbatore District,
Coimbatore.

5.The Inspector General of
Registration,
Santhome High Road, Chennai.

6.The Deputy Inspector General
of Registration, Coimbatore,
Pankaja Mill Road,
Coimbatore 18.

7.The District Registrar,
Coimbatore Registration District,
Coimbatore.

8.The District Registrar,

Tiruppur Registration District,
Tiruppur.